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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,950	02/09/2007	Stewart James Wright	A-10016	5937
7590		12/12/2007		
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			EXAMINER	
			LOPEZ, MICHELLE	
			ART UNIT	PAPER NUMBER
			3721	
			MAIL DATE	DELIVERY MODE
			12/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/576,950

Applicant(s)

WRIGHT, STEWART JAMES

Examiner

Michelle Lopez

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/24/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

DOUBLE PATENTING REJECTION

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5-6 of Wright U.S. Patent No. 6,938,365.

Although the conflicting claims are not identical, they are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims of the instant application to have been obvious variations of the claims of the patents. The claims of the patent and the claims of the present application are both directed to a support structure for a tool. While the claims of the present application may not recite a ram having a cylinder chamber, a piston, a by-pass, and control means associated with the by-pass, these differences in the claimed scope and terminology and the elimination of this language from the patent claims

would have been obvious to one having ordinary skill in the art.

Claims 4-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5-6 of Wright 6,938,365 in view of Hungerford 4,609,081.

Claims 1, 5, and 6 of Wright'365 discloses a support structure for a tool comprising a boom, a pendulum pivot, and dampening means, but fails to disclose wherein said dampening means comprises rotary hydraulic actuators. Hungerford teaches the support structure for a tool as claimed including rotary hydraulic actuators for the purpose of providing free swinging in two mutually perpendicular directions. It would have been obvious to one having ordinary skill in the art to have provided Wright's dampening means with rotary hydraulic actuators to control the swinging motion of the tool while providing free swinging motion of said tool in two mutually perpendicular directions.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, "said pair of spaced plates", and in claim 7, "the rotor housing" and "the end plate of the motor" lack antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 4-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hungerford 4,609,081.

Hungerford discloses a support structure for a tool comprising a boom or arm 11 for supporting a tool 12, a pendulum pivot 10 supporting the tool with respect to the boom in a manner that allow the tool to pendulate, and dampening means for controlling the pendulation of the tool on the pendulum pivot as shown in col. 2, lines 48-62 (claim 1); a first pivoted link at 13 supporting the tool from the boom and enabling it to swing in a first plane and a second pivoted link at 113 on a second pivoted link on a second plane at right angle to the first plane as shown in fig. 2 (claim 2); rotary hydraulic actuators 20,120 wherein pivot connections 13,113 of the pendulum pivot are coupled to a rotor 19,119 of said rotary hydraulic actuators (claims 4-5); wherein the rotary hydraulic actuators are sealed and include a closed-loop of hydraulic fluid that serves to damp the rotation of the pivots as shown in col. 2, lines 28-30, 40-42, and 48-62 (claim 6); wherein the rotary hydraulic actuators includes grooves 25,26 (claim 7).

With respect to claim 8, Hungerford shows the step of coupling a rotary hydraulic actuator to a pivot connection 13,113, and adapting the rotary hydraulic actuator to provide varying rotary resistance to the connection as shown in col. 2, lines 48-62.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hungerford 4,609,081 in view of Wright 6,938,365.

Hungerford discloses the support structure for a tool as claimed as discussed above, but fails to disclose wherein the pendulum pivot has a first pivoted link comprises a frame having two spaced lugs joined by a cross member, the lugs being pivotally connected to a yoke which provides a second pivotal link comprising a frame extending from the tool. However, Wright discloses a pendulum pivot with a first pivoted link and a second pivotal link comprising a frame, lugs, and yoke as claimed (see Wright's claim 5), for the purpose of enabling swing motion in a first and a second plane at right angles. It would have been obvious to one having ordinary skill in the art to have provided Hungerford's pendulum pivot with a first and a second pivoted link as taught by Wright to properly enabling swing motion in a first and second plane at right angles.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Isley, Gessner, Draney, Powell are cited to show related inventions.

Application/Control Number:
10/576,950
Art Unit: 3721

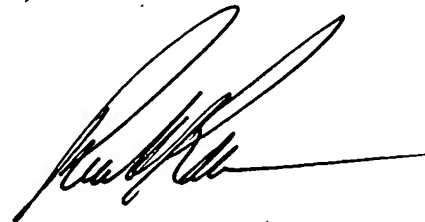
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ML/
Patent Examiner

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal line extending to the right.

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700